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IN THE
Supreme Court of the United States

October Term, 1957

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

JEAN F. STERN,
Respondent, Transferee.

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

WALTER E. BARTON,
Investment Building,
Washington 5, D. C.

WILLIAM H. BECK,
WILLIAM B. MARTIN,
Security Trust Building,
Lexington, Kentucky.
*Attorneys for Respondent,
Transferee.*

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The respondent, transferee, respectfully opposes the granting of the writ of certiorari prayed for by the petitioner herein for the reasons hereinafter stated.

QUESTIONS PRESENTED

Respondent disagrees with petitioner's statement of questions presented (Pet. 2-4) and states them to be as follows:

1. Whether respondent, as beneficiary of the proceeds of insurance on the life of her deceased husband, is liable at law or in equity as a transferee of property of the decedent's estate in respect of income tax, interest and penalties imposed upon decedent's estate for years prior

to his death, within the meaning of Sec. 311(a)(1), I.R.C. of 1939.

2. Whether the Kentucky statute providing that the lawful beneficiary of a life insurance policy shall be entitled to the proceeds thereof against the creditors and representatives of the insured is applicable to the United States.

3. Assuming respondent to be liable as a transferee of the property of decedent's estate, whether her liability is limited to the excess of the estate's liability for income taxes, interest and penalties over and above the value of the undistributed assets of the estate as of the date of decedent's death.

STATUTES INVOLVED

The statutes are printed in the petition at pages 20-22, except Secs. 827(b), 900 (a), (a)(1), (e) and 1119(a), I.R.C. of 1939, and Title 28, Sec. 1652, U.S.C., which read as follows:

Statutes Applicable to Estate Taxes

Internal Revenue Code of 1939

Sec. 827. (b) *Liability of transferee, etc.*—If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or *beneficiary*, who receives, or has on the date of the decedent's death, *property included in the gross estate under section 811 (b), (c), (d), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. * * * (Italics supplied.)*

Sec. 900. *Transferred assets.*

Sec. 900. (a) *Method of collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

Sec. 900. (a) (1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

Sec. 900. (e) *Definition of "transferee".*—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee, and includes any person who, under section 827 (b), is personally liable for any part of the tax.

Sec. 1119. *Provisions of special application to transferees.**

Sec. 1119. (a) *Burden of proof.*—In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

Title 28, Sec. 1652, U. S. C.

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the

* Sec. 6902 (a), I.R.C. of 1954, is the same.

United States, in cases where they apply. (June 25, 1948, c. 646, 62 Stat. 944.)

STATEMENT

Respondent agrees with the statement made by petitioner (Pet. 2-4), except as follows:

1. With respect to insolvency, respondent adopts the statement in the opinion of the Court of Appeals below that:

"There was no evidence and no finding of insolvency of any date prior to decedent's death; and there was no evidence or finding that the decedent took out or maintained the policies with intent to hinder, delay, or defraud his creditors." (Pet. 9.)

2. In the last paragraph of petitioner's statement (Pet. 3), he said that the Commissioner asserted that respondent was the transferee of the entire proceeds of decedent's insurance and, therefore, liable for the payment of his delinquent income taxes and penalties, and that The Tax Court sustained the Commissioner. Respondent submits that the entire proceeding in The Tax Court was whether respondent, as the beneficiary of the proceeds of insurance on decedent's life, was liable as transferee of the *estate of decedent*, and not whether she was liable as transferee of the *decedent*. (R. 4a, 7a, 10a, 17a.) Moreover, that is what the Court of Appeals below understood the question to be. (Pet. 9.)

REASONS WHY PETITION FOR WRIT SHOULD BE DENIED

1. *Petitioner is asking this Court to pass upon questions never presented to The Tax Court or to the Court of Appeals below.*

The only question before The Tax Court was whether respondent was liable as a transferee of the estate of decedent with respect to the proceeds of the policies of insurance. (Deficiency letter, R. 4a; Petition, R. 3a; Answer, R. 7a; Reply, R. 10a), and that is the only question decided by The Tax Court. (R. 17a.)

The only question presented to the Court of Appeals below was the same, and the Court of Appeals understood that to be the question. (Pet. 8, 9.)

This Court has held that a question not presented to The Tax Court should not be passed upon by a Court of Appeals for the logical reason that a litigant is entitled to know the basis of the claim against him (*General Utilities Operating Company v. Helvering*, 296 U. S. 200, 80 L. Ed. 154, 56 S. Ct. 185); and that a question not raised before The Tax Court and the Court of Appeals will not be considered by this Court on certiorari. (*Helvering v. Tex. Penn. Oil Co.*, 300 U. S. 481, 81 L. Ed. 755, 57 S. Ct. 569; *Helvering v. Cement Investors*, 316 U. S. 527, 86 L. Ed. 1649, 62 S. Ct. 1125.)

2. *There is no conflict between the decision of the Court of Appeals below and the decision of any other Court of Appeals.*

A. As to the liability of the beneficiary of a life insurance policy with respect to the proceeds, all Courts of Appeals which have passed upon the question have held that there is no transferee liability. (*Rowen v. Comm.*, (CA 2d, 1954) 215 F (2d) 641, rev'g 18 T. C. 874; *U. S. v. New*, (CA 7th, 1954), 217 F (2d) 166, rev'g 125 F. Supp. 312; *Tyson v. Comm.*, (CA 6th, 1954), 212 F. (2d) 46, rev'g T. C. Memo. Op., Dkt. 37494, PH Memo. Par. 53, 198; *U. S. v. Truax*, (CA 5th, 1955), 223 F (2d) 229, aff'g U. S. D. C. S. D. Georgia (unreported); *U. S. v. Bess*, (CA 3rd, 1957), 243 F (2d) 675, aff'g 134 F. Supp. 467.

B. As to the liability of the beneficiary of a life insurance policy with respect to the *cash surrender value* as a transferee of the *decedent's estate*, no other Court of Appeals has passed upon the question. All of the decisions referred to in the preceding paragraph involved the beneficiary's liability as a transferee of the *decedent* and not as a transferee of his *estate*, except the opinion in the *Truax* case did not indicate specifically what was involved—the liability as a transferee of the decedent or as a transferee of his estate. In any event, the question was not discussed in that case.

3. *The decision of the Third Circuit in the Bess case is contrary to the decisions of this Court on the question of the application of State law to cases involving property rights.*

The Third Circuit in the *Bess* case recognized that under the law of New Jersey, the State wherein the insured resided, the beneficiary wife has a "vested interest" in the proceeds of the policy.* This Court has held that State law governs as to property rights. (*Blair v. Comm.*, 300 U. S. 5, 81 L. Ed. 465, 57 S. Ct. 330); and that the law of the State is as much a part of the policy of insurance as though incorporated into the policy. (*Bank of Washington v. Hume*, 128 U. S. 195, 32 L. Ed. 370.)

4. *The decision of the Third Circuit in the Bess case is contrary to Title 28, Sec. 1652; U. S. C.*

Sec. 1652 provides that the laws of the several States, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply. Notwithstanding the Third Circuit recognized that the law of New Jersey gave the wife beneficiary a "vested interest" in the proceeds of the insurance, that Court held that she was a transferee with respect to the

* See footnote No. 3 of Court's opinion.

cash surrender value, thereby disregarding the law of that State, contrary to Sec. 1652, U. S. C.

5. *The decision of the Third Circuit in U. S. v. Bess, supra, holding that a transferee's liability in income tax cases is governed by Federal law is clearly erroneous.*

All of the Circuits except the Third Circuit have held that there is no Federal law creating transferee liability, where income taxes are involved, contrasting Sec. 311 (a)(1), (f), which does not include a beneficiary within the definition of transferee for income tax purposes, with Sec. 900 (a)(1), (b), (e), which does include a beneficiary within the definition for estate tax liability. This Court held in *Phillips v. Comm.*, 283 U. S. 589, 75 L. Ed. 1289, 51 S. Ct. 608, that Sec. 280 (a)(1) of the Revenue Act of 1926, which contains the same language as Sec. 311 (a)(1), did not create a new transferee liability but "a new remedy for enforcing the *existing* liability at law or in equity" by summary process instead of being compelled to resort to a court of equity, which theretofore had been the only remedy. Although the Third Circuit held that Federal instead of State law applies in determining the liability of a transferee, that Court did not indicate the source of Federal law creating such liability. (*Italics supplied.*)

6. *The fact that The Tax Court consistently holds that a beneficiary of the proceeds of life insurance is liable as a transferee to the extent of the proceeds for the unpaid income taxes of the deceased insured notwithstanding reversals by Courts of Appeals is not a ground for granting certiorari.*

The Tax Court has persisted in disregarding the decisions of Courts of Appeals and has forced the alleged transferee to incur the expense of appeal, even though he resides within the jurisdiction of the Circuit Court which has reversed The Tax Court in a former case

involving the same question. The Court of Appeals below rebuffed The Tax Court for refusing to follow that Court's decision in the *Tyson* case. (Pet. 9, 11.)

CONCLUSION

For the foregoing reasons the petition for writ of certiorari should be denied.

Respectfully submitted,

WALTER E. BARTON,
Investment Building,
Washington 5, D. C.

WILLIAM H. BECK,
WILLIAM B. MARTIN,
Security Trust Building,
Lexington, Kentucky.
*Attorneys for Respondent,
Transferee.*

